

GEORGE W. MURPHY

IBLA 80-153

Decided May 30, 1980

Appeal from a determination by the Alaska Townsite Trustee, Bureau of Land Management, that after passage of the Federal Land Policy and Management Act on October 21, 1976, appellant was ineligible to enter townsite lot.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Repealers -- Townsites

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

2. Estoppel -- Federal Employees and Officers: Authority to Bind Government

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

APPEARANCES: George W. Murphy, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

George W. Murphy appeals from a letter decision, by the Alaska Townsite Trustee, George E. M. Gustafson (Trustee), Bureau of Land Management (BLM), which stated that after October 21, 1976, no one could occupy and claim undivided townsite land. The Trustee did not specifically determine that appellant occupied after this date, but it is apparent from the record that he did.

Appellant states that in June 1977 he staked a tract at Nondalton Townsite according to instructions received at the Anchorage BLM office in response to the Trustee's published lists of open-to-entry townsite tracts after October 21, 1976. In June 1978 appellant transported cabin construction materials from Anchorage in a chartered plane. Before appellant began to build, however, the Regional Solicitor, Alaska, advised the Trustee that those claimants who did not occupy townsite lots by October 21, 1976, had no rights under the townsite laws, because those laws were repealed on that date by section 703 of the Federal Land Policy and Management Act, 90 Stat. 2790 (1976). The Trustee informed appellant of this and gave him a right of appeal to the Board.

Appellant argues here that he relied on the information and instructions from the Trustee and the Anchorage Office. He emphasizes that in June 1978 the Anchorage Office advised him that no legal obstacles impeded his claim.

[1, 2] Recently, in Royal Harris, 45 IBLA 87 (1979), a majority of the Board examined a similar appeal and held:

It is not clear from the file under what statutory authority appellant first initiated his claim. One of the townsite statutes was the Act of May 25, 1926, 44 Stat. 629, 43 U.S.C. §§ 733-36 (1970), which allowed Alaska Natives to obtain townsite lots. This statute, as well as the other townsite laws, was repealed by section 703 of FLPMA, 90 Stat. 2790. The question then becomes whether appellant has a valid existing right under section 701 of FLPMA, which provides that nothing in the Act shall be construed as terminating any patent, or other land use right or authorization existing on the date of approval of the Act (Oct. 21, 1976). The events giving rise to this appeal postdate the effective date of the Act. Therefore, on October 21, 1976, appellant could have had no valid existing right which would survive FLPMA. Stu Mach, 43 IBLA 306 (1979). When appellant wrote to BLM on May 9, 1977, he had only a hope or expectancy. However, use or occupancy of the public land granted subsequent to the

effective date of FLPMA must be under authority of that Act, 43 U.S.C. § 1732(b) (1976); William J. Coleman, 40 IBLA 180 (1979), and the erroneous advice provided by BLM could create no rights not authorized by law. Belton E. Hall, 33 IBLA 349 (1978).

The Board has repeatedly reconsidered and upheld this position that no rights can be created by occupancy within a townsite after the date the townsite laws were repealed. 1/ Thomas Taggart, 46 IBLA 350 (1980); Mark Lewis, 46 IBLA 257 (1980); Dorothea M. Taylor, 46 IBLA 198 (1980); Darrell P. Riggs, 46 IBLA 132 (1980); Dennis L. Lattery, 45 IBLA 219 (1980).

[3] Appellant's argument that he should be able to rely on instructions and advice from the Trustee and the Anchorage Office is, in effect, an assertion that BLM should be estopped from rejecting his claim to the townsite lot. The appellant in Royal Harris, supra, had relied on the Trustee's advice. There, the Board said:

It is well settled law that the Department can alienate interests in land belonging to the United States only within the limits authorized by law. Union Oil Co. of California v. Morton, 512 F.2d 743, 748 (9th Cir. 1975).

William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85, 89 (1976), illuminates the principle above as follows:

There is no doubt that Federal employees, and ordinary citizens, are presumed to know the contents of the United States Code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).

We believe the rule stated by the Supreme Court in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), is still correct:

* * * that the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit. (243 U.S. at 409)

1/ Judges Lewis and Thompson joined with the dissenting opinion in Royal Harris, 45 IBLA 87, 93 (1979), on the effect of repeal of the townsite laws as to claimants who initiate occupancy after repeal. We adhere to our position in that case. However, unless and until the Board's majority position is overturned, that position must be followed here. Only for that reason do we affirm the decision below.

* * * * *

We sympathize with appellant's expenditures of means and materials toward building a structure. Appellant has not shown, however, that a serious injustice necessarily would result if he cannot lay claim to the site. The letter appealed from suggests that one possible remedy lies with the municipality.

This appellant has also gone to considerable expense. Although, we sympathize with the problem, the Trustee's determination must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge

